Attorney's Docket No.: 16491-022001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Lev Korzinov et al.	Art Unit:	3766
Serial No.:	10/770,702	Examiner:	Eric D. Bertram
Filed:	February 2, 2004	Conf. No.:	1300
Title:	BIOLOGICAL SIGNAL MANAGEMENT		

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

In response to the Restriction Requirement mailed August 31, 2006, applicant hereby traverses the requirement and provisionally elects the invention of Group II, claims 13-19 for prosecution of the merits should the requirement be made final.

Applicant traverses the requirement on several grounds. For example, restriction between Groups I and II appears to be required on the basis of claim 1 reciting "a cardiac biological signal that includes an event" and claim 13 reciting "receiving a cardiac biological signal that includes information describing [plural] events." It defies logic to contend that the distinction between a singular event and plural events warrants separate classification and the present Restriction Requirement.

CERTIFICATE OF TRANSMISSION BY FACSIMILE

I hereby certify that this correspondence is being transmitted by facsimile to the Patent and Trademark Office on the date indicated below.

September 6, 2006
Date of Transmission

Julie H. Giordano
Signature

Julie H. Giordano
Typed or Printed Name of Person Signing Certificate

Further, the Restriction Requirement is also based on the contention that the method of claim 13 has a separate utility of "determining a sequential timing of cardiac events in a patient." While a biological signal that includes information describing plural events can, indeed, be used for this purpose, Applicant is at a loss to understand how the *method* recited in claim 1 has this separate utility. *Restriction is required between claims*, not elements and/or limitations recited in the claims. Thus, it is the method of claim 1 that must have the separate utility.

Moreover, 35 U.S.C. § 121 reads, "If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions." Thus, restriction is proper only if the inventions are independent and distinct. M.P.E.P. 802.01, headed "Meaning of 'Independent', 'Distinct'", reads as follows:

INDEPENDENT

The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect, for example, (1) species under a genus which species are not usable together as disclosed or (2) process and apparatus incapable of being used in practicing the process.

DISTINCT

The term "distinct" means that two or more subjects as disclosed are related, for example as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art). It will be noted that in this definition the term "related" is used as an alternative for "dependent" in referring to subjects other than independent subjects.

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The Examiner has not shown that the identified species "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER." Should the requirement for restriction be made final, the Examiner is respectfully requested to rule that the identified species "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

Moreover, nothing in 37 C.F.R. § 1.142 authorizes the Examiner from departing from the statutory requirements of 35 U.S.C. § 121 that the inventions be "independent and distinct" as a condition precedent to requiring restriction as observed in M.P.E.P. 802.01, and the directions of M.P.E.P. 803 that, "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (Emphasis added.)

In view of the above, withdrawal of the restriction requirement is respectfully requested.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: September 6, 2006

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A Response to Restriction Requirement dated **September 6, 2006** is attached.

Respectfully submitted,

Date: September 6, 2006

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